

App. 1

**TEXAS COURT OF APPEALS,  
THIRD DISTRICT, AT AUSTIN**

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**NO. 03-16-00318-CV**

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**Jesus E. Tirrez, Appellant**

**v.**

**Commission for Lawyer Discipline and  
Linda A. Acevedo, in her Official Capacity  
as the Chief Disciplinary Counsel of the  
State Bar of Texas, Appellees**

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**FROM THE DISTRICT COURT OF  
TRAVIS COUNTY, 419TH JUDICIAL DISTRICT  
NO. D-1-GN-14-004987, HONORABLE  
EARL B. STOVER III, JUDGE PRESIDING**

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**MEMORANDUM OPINION**

(Filed Jan. 12, 2018)

The State Bar of Texas Commission for Lawyer Discipline brought a disciplinary action against attorney Jesus E. Tirrez alleging that he committed professional misconduct in connection with improper solicitation of employment through an employee. Tirrez filed a counterclaim against the Commission and a third-party action against the Commission's Chief Disciplinary Counsel, Linda Acevedo, seeking a declaratory judgment stating that disciplinary proceedings are quasi-criminal and must be proved by

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clear and convincing evidence. The trial court granted a motion to dismiss Tirrez's counterclaims and the third-party action. Tirrez filed motions for sanctions against the Commission, its counsel, and Acevedo, including a "Notice of Fraud on the Court" and a motion to dismiss for "Selective or Vindictive Prosecution or for Prosecutorial Misconduct." The trial court denied these two motions. Following a bench trial, the court entered an order finding that Tirrez had violated Rules 5.03(b)(1), 7.03(a), and 8.04(a)(1). *See* Tex. Disciplinary Rules Prof'l Conduct R. 5.03(b)(1), 7.03(a), 8.04(a)(1), *reprinted in* Tex. Gov't Code tit. 2, subtit. G, app. A. It imposed sanctions including a 24-month partially probated suspension and \$18,743.17 in attorney's fees and direct expenses. Tirrez appeals, arguing that the trial court applied the wrong burden of proof, lacked sufficient evidence to support the judgment, abused its discretion by denying his motions for sanctions, and erred in its manner of imposing attorney's fees. We will affirm the judgment of the district court.

## BACKGROUND

The Commission filed a disciplinary petition against Tirrez after it received a grievance from Maria Audelo. The petition alleged that Audelo was injured in a car accident on September 29, 2013. According to Audelo, on October 1, 2013, she was improperly solicited at her home by a representative for Tirrez, with Tirrez's encouragement or permission. The solicitation resulted in Tirrez representing Audelo and her son in a civil matter. The Commission alleged in its petition

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that these actions by Tirrez violated Rules 5.03(b)(1), 7.03(a), and 8.04(a)(1). *See id.*

Tirrez filed a counterclaim against the Commission and a third-party action against Linda Acevedo, the Chief Disciplinary Counsel of the State Bar. Based on a 1968 United States Supreme Court decision, Tirrez sought a declaratory judgment stating that disbarment proceedings are quasi-criminal in nature and that the burden of proof is by clear and convincing evidence rather than a preponderance of the evidence. *See In re Ruffalo*, 390 U.S. 544 (1968). He also claimed that in applying the wrong burden of proof, the Commission denied him due process and equal protection, and he brought a section 1983 action seeking a declaratory judgment that to the extent that attorney-discipline proceedings are considered civil, they are unconstitutional. *See* 42 U.S.C. § 1983. On both claims, he asked for a temporary injunction preventing the Commission from pursuing the action under a preponderance-of-the-evidence standard. The Commission and Acevedo moved to dismiss Tirrez's counterclaims under Texas Rule of Civil Procedure 91a. *See* Tex. R. Civ. P. 91a. The Commission also sought sanctions under Texas Civil Practice and Remedies Code Section 10.001 against Tirrez's counsel for attorney's fees in the amount of \$1,000 as supported by an affidavit from counsel for the Commission, Rebecca Stevens. *See* Tex. Civ. Prac. & Rem. Code §§ 10.001, .004(c)(3) (allowing court to award party reasonable expenses incurred because of filing of improper pleading).

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In his response to the Commission's motion, Tirrez included a cross-motion for sanctions in the amount of his reasonable attorney's fees and costs, alleging that the Commission's motion to dismiss was frivolous because it ignored the Supremacy Clause and controlling United States Supreme Court precedent. Tirrez filed two supplemental responses as well, advancing additional argument regarding the proper burden of proof. With his final response, Tirrez attached an "Unsworn Declaration Under Penalties of Perjury" from his attorney, which purported to support a claim for attorney's fees in the amount of \$12,750. The trial court granted the Commission's motion, dismissing Tirrez's counterclaim and third-party action, and declined to award attorney's fees to either party.

Tirrez subsequently filed a "Notice of Fraud on Court and Request for Hearing," alleging that Stevens included material misstatements of fact in her affidavit supporting attorney's fees and that Audelo committed perjury in her deposition. Tirrez also filed a motion to dismiss for "Selective or Vindictive Prosecution or For Prosecutorial Misconduct," repeating his allegation that Stevens made and filed, under Acevedo's supervision, a false affidavit in violation of the Texas Disciplinary Rules of Professional Conduct. Tirrez claimed that by prosecuting Tirrez but not Stevens or Acevedo for Rule violations, the Commission engaged in selective prosecution in violation of the U.S. Constitution.

Following a three-day bench trial, the trial court denied Tirrez's notice of fraud on the court and his

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motion to dismiss for selective prosecution. The court entered a judgment finding that Tirrez had violated Rules 5.03(b)(1), 7.03(a), and 8.04(a)(1). *See* Tex. Disciplinary Rules Prof'l Conduct R. 5.03(b)(1), 7.03(a), 8.04(a)(1). It suspended Tirrez from the practice of law for two years, with 21 months of the suspension probated. As part of the sanctions, the court ordered Tirrez to pay attorney's fees in the amount of \$18,743.17. Tirrez appeals from the dismissal of his counterclaims under Rule 91a, the denial of his notice of fraud on the court and of his motion to dismiss for selective or vindictive prosecution, and from the court's final judgment.

## ANALYSIS

Tirrez appeals the trial court's orders in seven issues. The first two relate to his argument that attorney disciplinary proceedings are quasi-criminal. On this basis, he claims in his first issue that the trial court erred in dismissing his counterclaim and in his second issue that the court applied the wrong burden of proof to find that Tirrez had violated the Disciplinary Rules. In his third issue, Tirrez contends that insufficient evidence supports the court's judgment of suspension. Fourth, Tirrez argues that the trial court abused its discretion by denying sanctions against the Commission and Acevedo. In his fifth and sixth issues, Tirrez claims that the trial court abused its discretion by denying his motion regarding fraud on the court and by denying his motion for dismissal for selective prosecution, respectively. Finally, Tirrez contends that the

trial court erred by characterizing the award of attorney's fees as a sanction for violation of Disciplinary Rules and to the extent that such characterization is allowed by the Disciplinary Rules, he argues that the action is unconstitutional.

### **Burden of Proof**

In Tirrez's first and second issues, he argues that the trial court erred in dismissing his counterclaim because, he contends, the United States Supreme Court has determined that attorney disciplinary proceedings are quasi-criminal in nature and therefore must be proved by clear and convincing evidence. He points to *In re Ruffalo*, which he characterizes as holding that Fourteenth Amendment due process requires that disbarment proceedings be classified as quasi-criminal. Specifically, he relies on the Court's statements that, "[d]isbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer," and that disbarment proceedings "are adversary proceedings of a quasi-criminal nature." *In re Ruffalo*, 390 U.S. at 550-51. He acknowledges that the Court did not address the burden of proof in that case but asserts that Texas courts are nonetheless bound by the Supremacy Clause of the Constitution to treat disbarment proceedings as quasi-criminal. *See* U.S. Const. art. VI, cl. 2.

We review de novo the granting of a dismissal under Rule 91a. *City of Dallas v. Sanchez*, 494 S.W.3d 722, 724 (Tex. 2016); *Koenig v. Blaylock*, 497 S.W.3d

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595, 598 (Tex. App.—Austin 2016, pet. denied). Dismissal is proper under Rule 91a “if the allegations, taken as true, together with inferences reasonably drawn from them, do not entitle the claimant to the relief sought.” Tex. R. Civ. P. 91a.1; see *City of Dallas*, 494 S.W.3d at 724. Our determination is based “solely on the pleading of the cause of action.” Tex. R. Civ. P. 91a.6.

Tirrez’s counterclaim and third-party action and request for injunctive relief are based on his argument that attorney disciplinary actions are quasi-criminal and must be proved by clear and convincing evidence pursuant to the Supreme Court’s decision in *In re Ruffalo*. See 390 U.S. 544. In that case, Ruffalo had been indefinitely suspended from the practice of law by the Supreme Court of Ohio. *Id.* at 545. Subsequently, the Sixth Circuit Court of Appeals determined that discipline was justified and disbarred Ruffalo from practicing in federal court. *Id.* The Sixth Circuit’s decision was appealed to the Supreme Court. *Id.* The state-court decision was not before the Court. *Id.* However, the Sixth Circuit relied upon the state-court proceedings in making its determination, so the Supreme Court reviewed those proceedings and determined that a lack of due process prevented it from upholding the Sixth Circuit’s decision. *Id.* at 549-50. In doing so, the Court stated:

Disbarment, designed to protect the public, is a punishment or penalty imposed on the lawyer. . . . He is accordingly entitled to procedural due process, which includes fair

notice of the charge. . . . Therefore, one of the conditions this Court considers in determining whether disbarment by a State should be followed by disbarment here is whether ‘the state procedure from want of notice or opportunity to be heard was wanting in due process.’

. . .

Those are adversary proceedings of a quasi-criminal nature. . . . The charge must be known before the proceedings commence.

*Id.* at 550 (citations omitted). Finding that such want of notice did exist in the state-court proceedings, the Supreme Court reversed on these procedural grounds and did not reach the merits of the case. *Id.* at 552.

As Tirrez recognizes, the *Ruffalo* Court did not address the proper burden of proof for disbarment proceedings. Further, the Texas Rules of Disciplinary Procedure explicitly state that disciplinary actions are civil and require that in a disciplinary action, the Commission must prove its allegations by a preponderance of the evidence. *See* Tex. Rules Disciplinary P. R. 3.08C. “The two judicial systems of courts, the state judiciatures and the federal judiciary, have autonomous control over the conduct of their officers, among whom, in the present context, lawyers are included.” *Theard v. United States*, 354 U.S. 278, 281 (1957). Federal law preempts state licensing requirements only to the extent that they are contrary to federal law, which only reaches authority to practice in federal courts. *See State Unauthorized Practice of Law Comm. v. Paul*



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*Mason & Assoc.*, 159 B.R. 773, 776 (N.D. Tex. 1993), *aff'd*, 46 F.3d 469 (5th Cir. 1995). This has been acknowledged and affirmed by the Supreme Court of Texas in *State Bar of Texas v. Evans*, in which the Court rejected the argument that the United States Supreme Court's statement in *Ruffalo* regarding the quasi-criminal nature of disbarment proceedings affected Texas authority holding that those proceedings are civil in nature. *State Bar of Texas v. Evans*, 774 S.W.2d 656, 657 n.1 (Tex. 1989) ("At several points in its opinion the court of appeals states that disciplinary actions are 'quasi-criminal in nature.' Clear Texas authority is that disciplinary proceedings are civil in nature. . . . Thus, we disapprove of these statements by the court of appeals."). Many of our sister courts of appeals have reached the same conclusion. *See, e.g., Curtis v. Commission for Lawyer Discipline*, 20 S.W.3d 227, 230 n.1 (Tex. App.—Houston [14th Dist.] 2000, no pet.) (rejecting argument that Texas disciplinary proceedings are subject to clear-and-convincing burden of proof); *Favaloro v. Commission for Lawyer Discipline*, 994 S.W.2d 815, 822 (Tex. App.—Dallas 1999, pet. struck) (rejecting argument that Texas disciplinary proceedings are quasi-criminal); *McInnis v. State*, 618 S.W.2d 389, 395, 397 (Tex. Civ. App.—Beaumont 1981, writ ref'd n.r.e.) (rejecting arguments that Texas disciplinary proceedings are quasi-criminal and that trial court erred by employing preponderance-of-evidence burden of proof); *Drake v. State*, 488 S.W.2d 534, 536 (Tex. Civ. App.—Dallas 1972, writ ref'd n.r.e.) (rejecting argument that Texas disciplinary proceedings are quasi-criminal pursuant to *Ruffalo* and that

preponderance-of-evidence burden of proof is improper); *see also Polk v. State Bar of Tex.*, 480 F.2d 998, 1001-02 (5th Cir. 1973) (rejecting proposition that Texas state disciplinary proceedings are quasi-criminal pursuant to *Ruffalo*). We likewise conclude that Texas attorney disciplinary proceedings are civil in nature and subject to a preponderance-of-the-evidence burden of proof. *See Evans*, 774 S.W.2d at 657 n.1.

Tirrez's petition further asserts that to the extent state law requires that disciplinary proceedings be conducted as civil in nature and proved by a preponderance of the evidence, that law is unconstitutional because it denies Tirrez due process and equal protection of the law. To state a claim for deprivation of due process, Tirrez must at least allege (1) the deprivation of a constitutionally protected interest and (2) constitutionally inadequate procedures. *Osborne v. Texas*, No. A-13-CV-528-LY, 2013 WL 5556210, at \*4-5 (W.D. Tex. Oct. 8, 2013); *see Cleveland Bd. of Educ. v. Loudermill*, 470 U.S. 532, 538, 541 (1985). It is settled that attorneys facing disciplinary proceedings are protected by the Due Process Clause of the federal Constitution. *See* U.S. Const. amend. XIV, § 1; *In re Ruffalo*, 390 U.S. at 550. Due process requires, at a minimum, notice and an opportunity to be heard at a meaningful time and in a meaningful manner. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). There is no Texas authority supporting Tirrez's assertion that due process requires that civil attorney-discipline proceedings should be subject to a higher burden of proof than other civil proceedings. *See Granek v. Texas State Bd.*

*of Med. Exam'rs*, 172 S.W.3d 761, 777 (Tex. App.—Austin 2005, no pet.) (rejecting similar contention with respect to license to practice medicine, noting lack of authority). To the contrary, as discussed above, Texas courts have consistently rejected this argument. *See, e.g., Drake*, 488 S.W.2d at 538. This Court has previously explained that the purpose of professional disciplinary proceedings is to enforce civil statutes. “In civil cases, ‘[n]o doctrine is more firmly established than that issues of fact are resolved from a preponderance of the evidence.’” *Pretzer v. Motor Vehicle Bd.*, 125 S.W.3d 23, 39 (Tex. App.—Austin 2003), *aff'd in part, rev'd in part*, 138 S.W.3d 908 (Tex. 2004) (quoting *Sanders v. Harder*, 227 S.W.2d 206, 209 (Tex. 1950)). The clear and convincing evidence standard applies to civil matters “only in extraordinary circumstances, such as civil commitment hearings or involuntary termination of parental rights.” *Id.* (citations omitted). Tirrez has not shown that attorney disciplinary proceedings are such extraordinary circumstances. Consistent with controlling Texas precedent, we conclude that the proper standard of proof for Commission disciplinary proceedings is preponderance of the evidence.

To state a claim of discrimination under the Equal Protection Clause, Tirrez “must either allege that (a) a state actor intentionally discriminated against him because of membership in a protected class or (b) he has been intentionally treated differently from others similarly situated and that there is no rational basis for the difference in treatment.” *Osborne*, 2013 WL

5556210, at \*4-5 (citing *Gibson v. Texas Dep't of Ins.-Div. of Worker's Comp.*, 700 F.3d 227, 238 (5th Cir. 2012) (internal quotations and citations omitted)). Here, Tirrez does not allege that the Commission intentionally discriminated against him based on his membership in a protected class or that he suffered disparate treatment. There is no allegation of intentional discrimination on any basis. Consequently, we conclude that Tirrez has not stated a claim for a violation of the Equal Protection Clause.

Accordingly, because the trial court did not apply the wrong burden of proof, we overrule Tirrez's second issue. And because the trial court did not abuse its discretion in granting the Commission's Rule 91a motion to dismiss, we overrule Tirrez's first issue.

### **Sufficiency of the evidence**

In his third issue, Tirrez challenges the sufficiency of the evidence supporting the judgment of suspension.<sup>1</sup> He claims that the Commission's entire case was predicated upon the testimony of a single witness, Maria Audelo, whom Tirrez claims was not credible. Because her testimony was not credible, according to

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<sup>1</sup> Appellant does not specify whether he is challenging the legal or factual sufficiency of the evidence. We, however, construe his challenge as a legal-sufficiency one based on his argument that "no proof" supported the Commission's allegations and on his requested relief that we reverse the order and render judgment in Tirrez's favor. See *J.M.C. v. State*, No. 03-16-00777-CV, 2017 WL 474076, at \*2 n.1 (Tex. App.—Austin Jan. 31, 2017, no pet.) (mem. op.).

Tirrez, there was no proof supporting the Commission's allegations against Tirrez. The Commission responds that a party may not challenge the credibility of a witness on appeal because the trial court has sole authority to judge witnesses' credibility and determine the weight to give their testimony, and we agree. In a legal sufficiency review, we must "credit favorable evidence if reasonable jurors could, and disregard contrary evidence unless reasonable jurors could not." *City of Keller v. Wilson*, 168 S.W.3d 802, 827 (Tex. 2005); see *Thota v. Young*, 366 S.W.3d 678, 695 (Tex. 2012). The fact finder is the sole judge of the "credibility of the witnesses and the weight to give their testimony." *City of Keller*, 168 S.W.3d at 819. "Reviewing courts cannot impose their own opinions to the contrary." *Id.* "A reviewing court cannot substitute its judgment for that of the trier-of-fact, so long as the evidence falls within this zone of reasonable disagreement." *Id.* at 822.

Tirrez attacks Audelo's credibility because she testified that when she was solicited by Tirrez's representative, he had a copy of her hospital records with him. Tirrez argues that in order to believe this testimony, one would have to assume that a medical professional violated federal law protecting personal health information. He contends this casts so much doubt on Audelo's truthfulness so as to render her testimony entirely unbelievable. However, it would not be beyond the zone of reasonableness for the trial court to disregard part of Audelo's testimony and accept other parts. See *id.* at 820. Accordingly, we overrule Tirrez's third issue.

### **Sanctions**

In his fourth issue, Tirrez argues that the trial court abused its discretion when it denied sanctions against the Commission and its counsel. Tirrez moved for sanctions under Texas Rule of Civil Procedure 13, claiming that the Commission's motion to dismiss under Rule 91a and motion for sanctions against Tirrez's counsel were groundless. Specifically, Tirrez argues that the Commission and its counsel based their motions on argument that was contrary to the Supreme Court's holding in *In re Ruffalo* and failed to advise the court of authority contrary to its arguments regarding the proper burden of proof in attorney-disciplinary proceedings. *See In re Ruffalo*, 390 U.S. at 550. He also alleges that this amounts to a violation of attorneys' requirement of candor toward the tribunal set out in Disciplinary Rule 3.03(a)(4). Tex. Disciplinary Rules Prof'l Conduct R. 3.03(a)(4). The Commission relies on the merits of its argument regarding the burden of proof to counter the allegation that its pleadings were groundless.

“‘Groundless’ for purposes of this rule means no basis in law or fact and not warranted by good faith argument for the extension, modification, or reversal of existing law.” Tex. R. Civ. P. 13. We conclude above that the Commission's pleadings were meritorious, and therefore not groundless. Moreover, in order to justify sanctions under Rule 13, the movant must overcome a presumption that papers are filed in good faith to show that the pleading complained of was filed in bad faith or for the purpose of harassment. *GTE Commc'ns Sys.*

*Corp. v. Tanner*, 856 S.W.2d 725, 731 (Tex. 1993). Tirrez does not contend that the Commission filed its motion in bad faith or for the purpose of harassment, and he presented no evidence that would support such a claim. Accordingly, we conclude that the trial court did not abuse its discretion in denying Tirrez's motion for sanctions against the Commission and its counsel. Therefore, we overrule Tirrez's fourth issue.

### **Fraud on the Court**

In his fifth issue, Tirrez contends that the trial court abused its discretion by denying his "Notice of Fraud on the Court." In the Notice, Tirrez alleged that Commission counsel, Rebecca Stevens, perpetrated a fraud upon the court by filing a false affidavit. He requested various "sanctions," including prohibiting Stevens from practicing in the trial court, reporting Stevens to the Supreme Court, and requesting appointment of a special prosecutor. The affidavit at issue was filed in support of the Commission's motion for sanctions against Tirrez's counsel in the amount of attorney's fees incurred by the Commission to pursue its charges against Tirrez. The affidavit included the following averments:

My usual billing rate is \$200.00 per hour.

...

It was reasonable and necessary for the State Bar of Texas and the Commission for Lawyer Discipline to employ a lawyer to handle this matter on its behalf.

...

My billing rate, the number of hours spent in preparing and trying the case, and the total of One Thousand Dollars (\$1,000.00) due as a result are reasonable and consistent with billing rate, hours, and total for this type of service in Travis County, Texas. The fees I charged in this case are customarily charged in this area for the same or similar services for an attorney with my experience, reputation, and ability.

Tirrez argues that Stevens's statements were false because she is employed by the Commission, receives a salary, and is prohibited from engaging in the private practice of law. Thus, Tirrez argues, Stevens's statements regarding her "usual billing rate" were false statements because they implied that she charged an hourly fee for her services. However, Stevens also averred that from December 2010 through the time of making the affidavit, she was employed by the State Bar of Texas. In other words, the information Tirrez argues the Commission attempted to hide was made explicit in the affidavit. The inclusion of this information in the affidavit signals that Stevens was not attempting to deceive the court. On these facts, we cannot say that the trial court abused its discretion in denying Tirrez's motion for sanctions based on the Commission's alleged fraud on the court. See *Koslow's v. Mackie*, 796 S.W.2d 700, 704 (Tex. 1990) ("Imposing an available sanction is left to the sound discretion of the trial court. An appellate court will set aside the



decision only on a showing of a clear abuse of discretion.”). We overrule Tirrez’s fifth issue.

### **Selective Prosecution**

In his sixth issue, Tirrez argues that the Commission’s failure to prosecute Stevens for her false affidavit while pursuing its suit against Tirrez is selective prosecution in violation of the Equal Protection and Due Process clauses of the Fourteenth Amendment. He bases his argument on *Yick Wo v. Hopkins*, 118 U.S. 356 (1886), in which the Supreme Court held that unjustified discrimination in the enforcement of laws is illegal, “and the public administration which enforces it is a denial of the equal protection of the laws, and a violation of the fourteenth amendment of the constitution.” *Yick Wo*, 118 U.S. at 374. In that case, San Francisco officials had enforced a law disparately among identically situated city residents based entirely on nationality. “To succeed on a selective prosecution-equal protection claim, a defendant must provide exceptionally clear evidence that the decision to prosecute was for an improper reason.” *Roise v. State*, 7 S.W.3d 225, 243 (Tex. App.—Austin 1999, pet. ref’d). Tirrez offers no evidence of such impropriety. In fact, the act that Stevens allegedly should be prosecuted for—submitting a false affidavit—is not similar to the act that Tirrez allegedly took—barratry. That alone provides a reason that the Commission might prosecute them differently. Therefore, we conclude that the trial court did not abuse its discretion when it denied Tirrez’s motion

for dismissal on the basis of selective prosecution, and we overrule his sixth issue.

**Attorney's fees and expenses as a sanction**

In his seventh issue, Tirrez complains of the characterization of attorney's fees and expenses as an additional sanction against Tirrez, in combination with the requirement that they be paid by a date certain. He argues that this characterization means that if Tirrez does not pay the fees by the deadline, it will constitute professional misconduct, subjecting him to another disciplinary action or possibly a contempt proceeding, which could carry the potential punishment of imprisonment. Tirrez did not raise this issue to the trial court and so failed to preserve the issue. As such, he has waived his seventh issue. *See* Tex. R. App. P. 33.1.

**CONCLUSION**

Having overruled Tirrez's issues on appeal, we affirm the trial court's judgment.

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Cindy Olson Bourland, Justice

Before Chief Justice Rose, Justices Goodwin and Bourland

Affirmed

Filed: January 12, 2018

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[SEAL]

**COURT OF APPEALS**

THIRD DISTRICT OF TEXAS  
P.O. BOX 12547, AUSTIN, TEXAS 78711-2547  
[www.txcourts.gov/3rdcoa.aspx](http://www.txcourts.gov/3rdcoa.aspx)  
(512) 463-1733

JEFF L. ROSE, CHIEF JUSTICE  
DAVID PURYEAR, JUSTICE                      JEFFREY D. KYLE, CLERK  
BOB PEMBERTON, JUSTICE  
MELISSA GOODWIN, JUSTICE  
SCOTT K. FIELD, JUSTICE  
CINDY OLSON BOURLAND, JUSTICE

February 7, 2018

Mr. L. T. "Butch" Bradt	Mr. Matthew Greer
14090 Southwest Freeway	State Bar of Texas
Suite 300	P.O. Box 12487
Sugar Land, TX 77478	Austin, TX 78711
* DELIVERED VIA E-MAIL *	* DELIVERED VIA E-MAIL *

RE: Court of Appeals Number: 03-16-00318-CV  
Trial Court Case Number: D-1-GN-14-004987

Style: Jesus E. Tirrez  
v. Commission for Lawyer Discipline and  
Linda A. Acevedo, in her Official Capacity as  
the Chief Disciplinary Counsel of the State  
Bar of Texas

Dear Counsel:

Appellant's motion for rehearing en banc was denied by this Court on the date noted above.

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Very truly yours,

JEFFREY D. KYLE, CLERK

By: E. Talerico

Liz Talerico, Deputy Clerk

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**CAUSE NO. D-1-GN-14-004987**

<b>COMMISSION FOR</b>	§	<b>IN THE DISTRICT</b>
<b>LAWYER DISCIPLINE</b>	§	<b>COURT OF</b>
<b>V.</b>	§	<b>TRAVIS COUNTY,</b>
<b>JESUS E. TIRREZ</b>	§	<b>TEXAS</b>
	§	<b>419TH JUDICIAL</b>
	§	<b>DISTRICT</b>

**JUDGMENT OF PARTIALLY**  
**PROBATED SUSPENSION**

(Filed Mar. 30, 2016)

**Parties and Appearance**

On March 29 and 30, 2016, the above-entitled and numbered case was called by the Court with the Honorable Earl B. Stover, III, presiding pursuant to his appointment by the Supreme Court of Texas as set forth in Rule 3.02 of the Texas Rules of Disciplinary Procedure. Petitioner, the Commission for Lawyer Discipline (“Petitioner”), appeared through counsel, Rebecca (Beth) Stevens and Kathleen Winslow Morgan, and announced ready. Respondent, Jesus E. Tirrez (“Respondent”), Texas Bar Number 20076750, appeared by and through his attorney of record, L.T. “Butch” Bradt, and announced ready.

**Jurisdiction and Venue**

The Court finds that it has jurisdiction over the parties and the subject matter of this action and that venue is proper in Travis County, Texas.

**Professional Misconduct**

Having considered the pleadings, evidence, and arguments of the parties, the Court finds Respondent has committed Professional Misconduct as defined by Rule 1.06(W) of the Texas Rules of Disciplinary Procedure by violating Texas Disciplinary Rules of Professional Conduct Rules 5.03(b)(1), 7.03(a) and 8.04(a)(1).

**Judgment of Suspension**

The Court finds that the appropriate discipline is a suspension from the practice of law in the State of Texas for a period of two (2) years, with three (3) months of said suspension to be an active suspension, and twenty-one (21) months of said suspension to be probated, upon the terms and conditions set forth below.

IT IS, ACCORDINGLY, ORDERED, ADJUDGED, AND DECREED, that Respondent, Jesus E. Tirrez, State Bar No. 20076750, be and is hereby suspended from the practice of law in Texas, for a period of two (2) years, with three (3) months of said suspension to be an active suspension, and twenty-one (21) months of said suspension to be probated, upon the terms and conditions more fully set forth below. Respondent's

active suspension shall begin on April 18, 2016, and end on July 17, 2016. If Respondent complies with all of the following terms and conditions timely, the twenty-one (21) month period of probated suspension shall begin on July 18, 2016, and end on April 17, 2018, during which time Respondent shall be entitled to practice law in the State of Texas, subject to the following terms and conditions.

**Terms and Conditions**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that during the term of active suspension herein ordered, Respondent, Jesus E. Tirrez, shall be prohibited from practicing law in Texas, holding himself out as an attorney at law, performing any legal services for others, accepting any fee directly or indirectly for legal services, appearing as counsel or in any representative capacity in any proceeding in any Texas or Federal court or before any administrative body, or holding himself out to others or using his name, in any manner, in conjunction with the words “attorney at law,” “attorney,” “counselor at law,” or “lawyer.” This includes the prohibition against Respondent advertising in any form, including but not limited to the internet, as an “attorney,” “attorney at law,” “counselor at law,” or “lawyer.”

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED, that Respondent, Jesus E. Tirrez, on or before April 18, 2016, shall notify each of his current clients and opposing counsel in writing of this

suspension. In addition to such notification, Respondent is ORDERED to return any files, papers, unearned money, and other property belonging to clients in the Respondent's possession to the respective clients or to another attorney at the client's request. Respondent is ORDERED to file with the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, Texas 78711 (1414 Colorado St., Austin, Texas 78701), on or before April 25, 2016, an affidavit stating that all current clients and opposing counsel have been notified of the Respondent's suspension and that all files, papers, money and other property belonging to all clients have been returned as ordered herein.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Respondent shall, on or before April 18, 2016, notify in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter pending of the terms of this Judgment, the style and cause number of the pending matter(s), and the name(s), address(es) and telephone number(s) of the client(s) Respondent is representing in Court. Respondent is ORDERED to file with the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, Texas 78711 (1414 Colorado St., Austin, Texas 78701), on or before April 25, 2016, an affidavit stating that he has notified in writing each and every justice of the peace, judge, magistrate, and chief justice of each and every court in which Respondent has any matter(s) pending of the terms of this



Judgment, the style and cause number(s) of the pending matter(s), and the name(s), address(es) and telephone number(s) of the client(s) Respondent is representing in Court.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Respondent, Jesus E. Tirrez, shall, on or before April 25, 2016, surrender his Texas law license and permanent State Bar Card to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, Texas 78711, for transmittal to the Clerk of the Supreme Court of Texas. In the event Respondent's law license or State Bar Card cannot be located, Respondent, Jesus E. Tirrez, shall, on or before April 25, 2016, file an affidavit with the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, Texas 78711, stating that his law license and/or State Bar Card cannot be located.

IT IS FURTHER ORDERED, ADJUDGED, and DECREED that as an additional sanction arising from Respondent's professional misconduct, the State Bar of Texas shall have judgment against Respondent for reasonable and necessary attorneys' fees and expenses of litigation in the amount of \$18,743.17 (eighteen thousand seven hundred forty-three dollars and 17/100) payment of attorneys' fees and direct expenses shall be on or before April 17, 2018. [EBS] The payment shall be made by certified or cashier's check or money order made payable to the State Bar of Texas and delivered to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel's Office, P.O. Box 12487,

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Austin, Texas 787112487 (1414 Colorado St., Austin, Texas 78701).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that all amounts ordered herein are due to the misconduct of Respondent, and are assessed as a part of the sanction in accordance with Rule 1.06(Z) of the Texas Rules of Disciplinary Procedure. Any amount not paid shall accrue interest at the maximum legal rate per annum until paid, and the State Bar of Texas shall have all writs and other post-judgment remedies against Respondent in order to collect all unpaid amounts.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that in addition to complying with the Minimum Continuing Legal Education (MCLE) requirements of the State Bar of Texas, Respondent shall complete ten (10) additional hours of continuing legal education in the area of Ethics and supervision of employees. These additional hours of CLE are to be completed on or before July 17, 2016. Within ten (10) days of the completion of these additional CLE hours, Respondent shall verify completion of the course to the State Bar of Texas by delivering written notice to the Statewide Compliance Monitor, Office of the Chief Disciplinary Counsel's Office, P.O. Box 12487, Austin, Texas 78711-2487 (1414 Colorado St., Austin, Texas 78701).

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that during all periods of suspension,

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active or probated, Respondent shall be under the following terms and conditions:

1. Respondent shall not violate any term of this Judgment.
2. Respondent shall not be found guilty of, or plead “no contest” to, any intentional or serious crime, barratry, or any crime involving moral turpitude or any misdemeanor or felony involving theft, embezzlement, or fraudulent misappropriation of money or property, nor violate the laws of the United States or any other State other than minor traffic violations.
3. Respondent shall not violate any of the provisions of the Texas Disciplinary Rules of Professional Conduct.
4. Respondent will maintain a current status regarding occupation tax and membership fees in accordance with Article III of the State Bar Rules.
5. Respondent shall comply with Minimum Continuing Legal Education (MCLE) requirements in accordance with Article III of the State Bar Rules.
6. Respondent shall comply with Interest on Lawyers Trust Account (IOLTA) requirements in accordance with Article III of the State Bar Rules.
7. Respondent shall keep the State Bar of Texas Membership Department and the Office of the Chief Disciplinary Counsel notified of his

current business and home addresses, and telephone numbers, and shall send notice, within ten (10) days of any change in address or telephone number.

8. Respondent shall promptly respond to any request for information from the Chief Disciplinary Counsel in connection with any investigation of any allegations of professional misconduct.
9. Respondent shall cooperate fully with the Chief Disciplinary Counsel's Office of the State Bar of Texas in its efforts to monitor compliance with the terms and conditions of this Judgment.

#### **Motion to Revoke Probation**

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that if evidence arises that Respondent has committed professional misconduct or has violated any term of this judgment, the State Bar of Texas may, in addition to all other remedies available, file a motion to revoke probation with the District Court in the County of Respondent's residence or place of practice and serve a photocopy of the Motion on Respondent pursuant to Tex.R.Civ.P. 21a.

The Court shall, without the aid of a jury and within thirty (30) days of service of the motion upon Respondent, conduct an evidentiary hearing. At the hearing, the Court shall determine by a preponderance of the evidence whether Respondent has violated any term or condition of probation of this Judgment. If the

Court finds that Respondent has committed acts of professional misconduct during the period of probated suspension or violated any term of this probation or this Judgment, the Court shall enter an Order revoking probation and placing Respondent on active suspension from the date of such revocation order. Upon revocation, Respondent shall be actively suspended for the full two-year term of suspension and shall not be given credit for any term of probation served prior to the revocation. An order revoking probation may not be superseded or stayed.

IT IS FURTHER ORDERED that any conduct on the part of Respondent which serves as the basis for a motion to revoke probation may also be brought as independent grounds for discipline as allowed under the Texas Disciplinary Rules of Professional Conduct and Texas Rules of Disciplinary Procedure and/or the State Bar Rules.

IT IS FURTHER ORDERED that this suspension shall be made a matter of public record and shall be published in the *Texas Bar Journal*.

IT IS FURTHER ORDERED that the Clerk of this court shall forward a certified copy of Petitioner's Disciplinary Petition on file herein, along with a certified copy of this judgment, to the Clerk of the Supreme Court of Texas, Supreme Court Building, P.O. Box 12248, Austin, Texas 78711, and to the Office of the Chief Disciplinary Counsel, P.O. Box 12487, Austin, Texas 78711.

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All requested relief not expressly granted herein  
is expressly denied.

SIGNED this 30 day of March 2016.

/s/ Earl Stover  
\_\_\_\_\_  
**HONORABLE**  
**EARL B. STOVER, III**  
**JUDGE PRESIDING**

**APPROVED AS TO FORM**

\_\_\_\_\_  
L.T. "Butch" Bradt  
Attorney for Respondent

**APPROVED AS TO FORM & SUBSTANCE**

/s/ Rebecca Stevens  
\_\_\_\_\_  
Rebecca (Beth) Stevens  
Attorney for Petitioner

\_\_\_\_\_

**CAUSE NO. D-1-GN-14-004987**

<b>COMMISSION FOR</b>	§	<b>IN THE DISTRICT</b>
<b>LAWYER DISCIPLINE</b>	§	<b>COURT OF</b>
<b>V.</b>	§	<b>TRAVIS COUNTY,</b>
<b>JESUS E. TIRREZ</b>	§	<b>TEXAS</b>
	§	<b>419TH JUDICIAL</b>
	§	<b>DISTRICT</b>

**ORDER GRANTING COUNTER-DEFENDANT  
AND THIRD PARTY DEFENDANT'S MOTION  
TO DISMISS BASELESS CAUSES OF ACTION  
AND REQUEST FOR SANCTIONS**

(Filed Nov. 3, 2015)

After considering the Counter-Defendant and Third Party Defendant's Motion to Dismiss Baseless Causes of Action and Request for Sanctions, the responses and replies on file, the Court hereby GRANTS Counter-Defendant's and Third Party Defendant's Motion to Dismiss Baseless Causes of Action and Request for Sanctions.

Respondent's Counterclaim and Third-Party Action and Request for Injunctive Relief is dismissed.

Signed on this 15 of October 2015.

/s/ Earl Stover  
\_\_\_\_\_  
PRESIDING JUDGE

\_\_\_\_\_

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FILE COPY

RE: Case No. 18-0244

DATE: 5/4/2018

COA #: 03-16-00318-CV TC#: D-1-GN-14-004987

STYLE: TIRREZ v. CLD

Today the Supreme Court of Texas denied the petition for review in the above-referenced case.

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FILE COPY

RE: Case No. 18-0244

DATE: 6/15/2018

COA #: 03-16-00318-CV TC#: D-1-GN-14-004987

STYLE: TIRREZ v. CLD

Today the Supreme Court of Texas denied the motion for rehearing of the above-referenced petition for review.

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